

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 288

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to whether the City may award an emergency non-bid contract to a business in which a City employee has a substantial financial interest.

The Commission understands the facts relative to your inquiry to be as follows:

You are in the process of terminating a contract with a cleaning service to maintain sidewalks and landscape along Kalakaua Avenue in Waikiki because the cleaning service is in default. It will then be necessary for the City to award a non-bid contract to a replacement contractor on an emergency basis to complete the rest of the work through July 31, 1998.

A City maintenance supervisor ("A") has a substantial financial interest in a business ("ABC") which has previously been awarded the contract for maintaining Kalakaua Avenue landscaping and sidewalks. A, whose company submitted a bid at the time that the cleaning service was awarded the current contract, would like for ABC to be considered for the short term emergency award. A has indicated that ABC would do the required work at less cost to the City than would the contractor to whom you are contemplating making the award.

The ethical question presented is whether a company in which a City employee holds a substantial financial interest can be awarded an emergency non-bid City contract.

The general rule in relation to your question is found in the Revised Ordinances of Honolulu 1990, Section 3-8.2(e), which states in pertinent part:

No officer or employee of the city...shall [e]nter into any contract in behalf of the city with an officer or employee or with a business in which an officer or employee has a controlling or substantial financial interest, involving the furnishing of services...**unless the contract is made after competitive bidding...** (emphasis added).

Based on the evidence presented, the Commission finds that the City may not award this emergency non-bid contract to ABC or to any other business in which a City officer or employee holds a substantial financial interest. The City may, however, enter into a contract with ABC for future work, if it is selected after a process of competitive bidding.

Dated: March 20, 1998

FAY M. UYEMA
Chair, Ethics Commission